

**U.S. Department of Labor**

Office of the Solicitor  
201 Varick Street  
New York, New York 10014



Reply to the Attention of:

SOL:JC  
(212) 337-2111

**VIA ECF AND REGULAR MAIL**

March 5, 2007

Hon. Lewis A. Kaplan  
United States District Judge  
United States District Court for  
The Southern District of New York  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street, Room 1310  
New York, New York 10007

Dear Judge Kaplan:

Re: Chao v. Sabe Restaurant 401(k) Plan  
Civil Action File No. 07-0758 (LAK)

This letter is written in response to Your Honor's Order dated February 26, 2007. The undersigned attorney respectfully requests a postponement of the initial conference scheduled for March 30, 2007, at 10 a.m. on two grounds. First, I am already required to attend a settlement conference at the Trenton Vicinage of the District of New Jersey on that day in the consolidated matters of Chao v. Feedback et al., Civil Action File Nos. 04-4808 and 04-4696 (GEB)(JHH). The matters are a complex series of cases involving counsel for several different parties; it would be extremely difficult to either reschedule or arrange a substitute lawyer.

Second, the whereabouts of the Defendant Sabe Restaurant 401(k) Plan's trustees are not precisely known; the Secretary's counsel respectfully submits that an initial conference before they can be located and served may be premature. The trustees, who are the agents for service on the Plan, abandoned their posts; as a result, the Plan participants cannot gain access to their account balances. In the Secretary's view, this Plan now exists in violation of the Employee Retirement Income Security Act (ERISA), which requires that all employee pension benefit plans have named fiduciaries with authority to manage and distribute assets. To cure this violation, she has filed this action to seek appointment of an independent fiduciary to distribute the account balances and terminate the Plan. The Secretary's investigators are trying to serve the Plan by serving its trustees. In the event the trustees cannot be found and served by the usual means under F.R.Civ.P.

4, the Secretary anticipates moving for leave of this Court to engage in substitute service. After service has been effectuated, the Secretary intends to apply to this Court for the appointment of an independent fiduciary as described above.

For the above reasons, the Secretary's counsel respectfully seeks a postponement of the initial conference scheduled for March 30, 2007.

Sincerely,

Patricia M. Rodenhausen  
Regional Solicitor

By: */s/ John G. Campbell*  
John G. Campbell  
Attorney JC(2125)